

# **EXHIBIT**

**2**

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF TEXAS  
AUSTIN DIVISION

UNITED STATES OF AMERICA, )  
)  
Plaintiff, )  
)  
v. ) Case  
) No. 1:23-cv-00853-DAE  
GREG ABBOTT, in his )  
capacity as GOVERNOR OF )  
THE STATE OF TEXAS, and )  
THE STATE OF TEXAS, )  
)  
Defendants. )

ORAL DEPOSITION OF  
MICHAEL BANKS  
Wednesday, July 10, 2024

ORAL DEPOSITION OF MICHAEL BANKS, produced as  
a witness at the instance of the Plaintiff, United  
States of America, and duly sworn, was taken in the  
above-styled and numbered cause on the 10th of  
July, 2024, from 9:10 a.m. to 12:43 p.m., before Sharon  
Ross, Certified Shorthand Reporter in and for the State  
of Texas, reported by computerized stenotype machine, at  
the US Attorney's Office for the Western District of  
Texas, 903 San Jacinto Boulevard, Suite 334, Austin,  
Texas 78701, pursuant to the Federal Rules of Civil  
Procedure and/or any provisions stated on the record or  
attached hereto.

Reported by:  
SHARON ROSS, Texas CSR #1961,  
Hawaii CSR #432, RMR, CRR, CRC  
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Also Present:

Armando Salinas, Jr.

1 traffic that was coming across.

2 Because so many more have been funneled  
3 downriver closer to the port of entry, it has reduced  
4 the amount of law enforcement and military we need in  
5 that area.

6 Q. Okay. But you say here, "No illegal  
7 cross-border activity has happened."

8 A. At the buoys, correct.

9 Q. You mean at the buoys themselves?

10 A. Correct.

11 Q. You do not mean that there have been no illegal  
12 crossings on the bank for 1500 feet on either side of  
13 the buoys?

14 A. Correct.

15 Q. So when you say this portion of the border  
16 there is no illegal cross-border activity, you're really  
17 referring to the floating barrier itself?

18 A. The portion of buoys at the floating barrier  
19 co -- or the portion of the river that the floating  
20 barrier covers.

21 Q. Itself?

22 A. Right.

23 Q. Next you say, "While employed at CBP, Mr. Banks  
24 is aware of the agency engaging in the process of  
25 putting the very same buoys in the Rio Grande River.

1       However, when the administration changed, the buoy  
2       contracts were shelved. The decision to shelf the buoys  
3       was not an operational, legal, or safety decision but  
4       instead a political one."

5               Without getting into the specifics of what  
6       happened -- I'm not asking you -- and I believe you've  
7       not been authorized to disclose the substance of those  
8       conversations that you were having while you were at  
9       CBP, but I want to get into the basis of your knowledge.

10              So not the specific conversations, but were  
11      you personally involved in the process of putting what  
12      you describe as the very same buoys in the Rio Grande  
13      River?

14              A. Was I involved in the delivery of discussions?  
15      Yes, not all of them, but at least one specific one.

16              Q. One specific conversation?

17              A. (Witness nods head.)

18              Q. Do you recall other specific conversations?

19              A. So one in the delivery process and determining  
20      who, when, what, where, and how and then one in the "we  
21      will not" conversation.

22              Q. Were you personally involved in any way in a  
23      procurement process?

24              A. No.

25              Q. Were you part of CBP's procurement office?

1 A. No.

2 Q. You mention the decision to shelf the buoys.  
3 By that, do you mean ultimately CBP did not procure a  
4 floating barrier?

5 A. So since I wasn't in the procurement  
6 department, does signing a contract constitute  
7 procurement if the shel -- or if the buoys haven't been  
8 delivered?

9 Q. Let's pause. And, again, not getting into  
10 those --

11 A. Right.

12 Q. I'm just asking what you mean by "shelved."

13 A. I mean it was: Cancel the contract. We're not  
14 putting anything that's considered infrastructure on the  
15 border.

16 Q. Okay. Were you personally involved in the  
17 consideration of that decision?

18 A. I'm trying to figure out how to answer the  
19 question as honestly as possible. Can you repeat it one  
20 more time?

21 Q. Were you personally involved in that decision?

22 A. In the decision to?

23 Q. The consideration of that decision.

24 MR. BRYANT: Objection to form.

25 A. In the decision to?

1 Q. (BY MS. LOWRY) Whatever the substance is  
2 regarding the buoys, were you personally involved in the  
3 decision-making or were you just told about the  
4 decisions that had been made?

5 A. My opinion was asked and given.

6 Q. Okay. Looking at your fourth opinion in  
7 Exhibit 1, can you please read that into the record?

8 THE REPORTER: Slowly.

9 THE WITNESS: Sorry. I'm from Georgia and  
10 I'm supposed to talk slow, but I don't.

11 A. In conditions -- are the conditions in recent  
12 years in the Rio Grande area where the buoys are  
13 located -- I'm going to read it again. You messed me up  
14 when you slowed me down.

15 "The conditions in recent years in the Rio  
16 Grande area where the buoys are located have  
17 deteriorated to such an extent that placing the buoys  
18 was necessary. Over the last three and a half years,  
19 the Eagle Pass area has become not only a major public  
20 safety issue but also a humanitarian crisis.

21 "The Del Rio Sector where the buoys were  
22 located saw a 547 percent increase in cross-border  
23 related deaths over the last three and a half years.

24 "Prior to the installation of the buoys,  
25 there were thousands of illegal" migrants -- or



1 "immigrants huddled under a bridge with thousands more  
2 held in retention ponds adjacent to the bridge and  
3 thousands more still crossing with federal law  
4 enforcement doing nothing to stop the flow."

5 Q. Does that accurately capture your opinion?

6 A. I do believe that -- I was looking at death  
7 numbers yesterday, and it is a 447 percent increase, not  
8 a 547 percent.

9 Q. Okay. Thank you. Are there any other changes  
10 or caveats you would like to add to this opinion?

11 A. No.

12 Q. Besides the data on the number of  
13 border-related deaths, what other data did you look at  
14 in forming this opinion?

15 A. Total number of crossings, communications with  
16 the mayor, with the Chief of Police of Eagle Pass, with  
17 the fire department, the fire chief.

18 It's -- it's quite a bit of data. It is  
19 and it's ever changing but communicating with local  
20 stakeholders, city councilmen, mayors, law enforcement,  
21 fire department, communicating with COs of hospitals on  
22 the bed space in hospitals and then, of course, CBP data  
23 and our own internal data.

24 Q. When you say the conditions in recent years in  
25 the Rio Grande area where the buoys are located have

1 deteriorated, what do you mean by "the Rio Grande area"?

2 A. So specifically the Eagle Pass area -- and I  
3 want to be careful because I know there's Eagle Pass  
4 north and south and a lot of this is kind of on the seam  
5 of these two stations; but I'm referring to Eagle Pass,  
6 Rio Grande, and all the small communities in that area.

7 Q. When, in your opinion, did the placement of the  
8 floating barrier become necessary?

9 A. Shortly before it went in. So it went in July.  
10 So I think my advice regarding the buoys came up in --  
11 sometime in June.

12 Q. June 2023?

13 A. Yes.

14 Q. Prior to that you did not consider it  
15 necessary?

16 A. It -- I don't -- it's not that you don't  
17 consider something necessary. It's you're looking at  
18 all available options.

19 And when you're doing things and they're  
20 having an impact but not as great of an impact as you  
21 need to give the communities the relief that they  
22 deserve, you have to start looking at additional --  
23 additional things.

24 And, again, based on my experience with  
25 CBP, I -- these things had never been pla -- actually

1 placed by CBP in the river. So we didn't know for a  
2 fact if they would or would not work, but what we did  
3 know is that -- what I knew is that many of the experts  
4 in CBP --

5 Q. Okay. That's -- I think -- are we relying on  
6 the conversations you had within CBP while employed  
7 there?

8 A. This would be conversations with prior CBP  
9 after I re -- after I retired and after they had retired  
10 in regards to the buoys.

11 Q. Okay. So after, not while you were employed at  
12 CBP?

13 A. Correct.

14 Q. Okay.

15 A. And it's speaking with many of them that were  
16 maybe involved in the delivery process, that would be a  
17 question that --

18 Q. Then we're not going to get into it. Thank  
19 you.

20 The -- in your opinion, what is the  
21 threshold where the floating barrier will no longer be  
22 necessary?

23 A. You know, I don't know that there's a magic  
24 number. I think you -- I mean, honestly the magic  
25 number would be nobody crosses the border illegally.